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Supreme Court, U.S.
FILED

No. _____

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In The

Supreme Court of the United States

NELSON ALBERTO PERDOMO,

Petitioner,

v.

UNITED STATES ATTORNEY GENERAL,

Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Eleventh Circuit

PETITION FOR A WRIT OF *CERTIORARI*

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A. QUESTION PRESENTED FOR REVIEW

The Revolutionary Armed Forces ("FARC") is a terrorist organization in the country of Columbia that is responsible for hundreds, if not thousands, of political refugees. Nestor Perdomo is one of those refugees who FARC terrorists beat and threatened at gunpoint.

The question presented is whether Mr. Perdomo should be denied asylum merely because Mr. Perdomo divorced his wife after they fled to the United States from FARC terrorists.

B. CITATIONS

Lower tribunal:

Nelson Alberto Perdomo v. U.S. Attorney General, case no. 06-12960 (11th Cir. October 2, 2007).

Immigration tribunal:

Nelson Alberto Perdomo, Board of Immigration Appeals case no. A95-221-846. (See Appendix at App. 3-14).

C. BASIS FOR JURISDICTION

The United States Court of Appeals for the Eleventh Circuit entered the order on October 2, 2007. 28 U.S.C. § 1254 confers jurisdiction for appeal.

D. STATUTORY PROVISIONS

The laws involved in this case are 8 U.S.C. § 1158 and 8 U.S.C. § 1101, laws governing asylum and immigration.

E. STATEMENT OF THE CASE

1. Introduction

This case is about saving Nelson Perdomo's life. Mr. Perdomo's asylum petition is based on his past and future political persecution by FARC, a Marxist paramilitary organization. Unlike his (now) ex-wife, who married a United States citizen in order to avoid

harm from FARC terrorists, Mr. Perdomo's sole option for safety is political asylum.

2. Political persecution

In about 2000, while living in Columbia, Mr. Perdomo's wife, Nilzy Cardenas, coordinated a program for young peasants who were displaced from surrounding farms and agriculture centers by FARC terrorists. Cardenas taught classes on health, democracy, and civil rights. The goal of the program was to steer youth away from joining FARC terrorists.

FARC terrorists interrupted Cardena's class in mid-2000 and insisted that she cease her activities, berating her with insults. When Cardenas refused, FARC terrorists sent pamphlets and made telephone calls to her, insulting and insisting that Cardenas cease her activities.

In November 2000, FARC terrorists blocked Mr. Perdomo and Cardenas in their vehicle, pointed guns at them, and yelled insults. The terrorists demanded an explanation for why Cardenas had not ceased her activities.

The terrorists then forced Mr. Perdomo and Cardenas out of the vehicle. After a terrorist hit Cardenas in the face with his fist, Mr. Perdomo tried to defend Cardenas. As a result, several terrorists ganged up on him, beating and kicking him with feet and weapons.

The FARC terrorists next forced the couple to their knees. A terrorist pointed a gun at Cardenas' head, demanding that she cease her activities. FARC terrorists then shot out the vehicles tires.

Mr. Perdomo and his wife reported the incident to the local police chief who advised them to leave town. The two fled to Bogota, Columbia. While there, in January 2001, a FARC member called the couple's friend, threatening her for protecting Mr. Perdomo and Cardenas. As a result, Mr. Perdomo and Cardenas fled to the United States.

3. Plea for asylum

While in the United States, the couple divorced. Whereas Cardenas married a United States citizen and avoided the prospect of returning to Columbia *via* her new marital status, Mr. Perdomo sought asylum from Columbia with the Board of Immigration Appeals (BIA).

The BIA denied Mr. Perdomo's petition, holding that the attack by FARC terrorists was not persecution and, moreover, that there was no reasonable fear of future attack because his (now) ex-wife was the initial target of FARC terrorists.

Mr. Perdomo appealed with the United States Eleventh Circuit Court of Appeals, which sustained the BIA's decision. The Circuit Court held that Mr. Perdomo was not persecuted on any "protected ground element." The Court held not only that it was

his (now) ex-wife's political opinion, not his, that was the initial focus of FARC terrorists, but also that because he is now divorced, there is no well-founded fear of future persecution.

F. ARGUMENT AND REASONS FOR GRANTING *CERTIORARI*

FARC terrorists are real. Nelson Perdomo's beating and gunpoint threats by those terrorists were real too. Mr. Perdomo's divorce from his wife did not change that reality of political persecution, nor should his asylum petition be denied for the *pro forma* transparency of 'divorce.' This Court should grant *certiorari* not only in order to save Mr. Perdomo's life from FARC terrorists but also to establish a coherent, repeatable standard for assessing asylum cases involving FARC and other terrorists when the petition for asylum involves a past marital situation.

FARC terrorists are responsible for hundreds of (reported and unreported) asylum cases in Westlaw's legal database, at least 29 of which have been decided since this year's celebration of the July 4th Independence Day. (See Appendix at App. 15-16). Given the overabundance of fact patterns in asylum cases, there is tortured, chaotic discord between the analyses for determining "persecution" and "a well-founded fear." By the mere luck, as it were, of a different panel of judges, Mr. Perdomo's case could have been decided differently with just as much 'judicial logic.'

For instance, the Court granted an asylum petition in *Alzate-Zuleta v. U.S. Atty. Gen.*, 238 Fed.Appx. 472, 476 (11th Cir. 2007), based on FARC's threats to his wife. Likewise, in *Ramirez v. Atty. Gen. of the U.S.*, 187 Fed.Appx. 228, 229 (3rd Cir. 2006), the Court relied upon the kidnapping of the petitioner's son-in-law in vacating the BIA's denial of asylum. Similarly, in *Guo v. Ashcroft*, 386 F.3d 556, 563 at n.6 (3rd Cir. 2004), the Court considered the argument that the validity of the (non-FARC) asylum petition should have been questioned based on the petitioner's change in marital status upon entering the United States:

> [W]e are unaware of any case that holds that an applicant will be denied asylum simply because building a better life in America was a motivation for leaving her country.

Thus, whereas the panel of judges that denied Mr. Perdomo's asylum petition found that the divorce from his wife was the key for denying asylum, another panel of judges could have used the relationship to his wife as the very reason for granting asylum. Perhaps more importantly, there is no lucid, consistent guidance from this Court on the issue of assessing a martial situation as it relates to "persecution" and "a well-founded fear."

Therefore, it is militant upon this Court to establish an articulate standard for determining "persecution" and "a well-founded fear" in fact-intensive asylum petitions involving past marital situations,

not only in light of the discordant analyses from various other courts but also because of FARC terrorists' central role in the continuing destabilization of the government of Columbia.

Respectfully submitted,

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2007 WL 2850607

United States Court of Appeals,
Eleventh Circuit.
Nestor Alberto PERDOMO, Petitioner,
v.
U.S. ATTORNEY GENERAL, Respondent.
No. 06-12960.
Oct. 2, 2007.

Arturo Aponte-Pares, Carlos Berreteaga, Alberto Guerrero Law Office, Orlando, FL, for Petitioner.

Susan Hollis Rothstein-Youakim, U.S. Attorney's Office/Middle Dist. of FL, Tampa, FL, David V. Bernal, Anthony Cardozo Payne, USDOJ, Office of Immigration Litigation, John C. O'Quinn, Washington, DC, Michelle Ressler, Miami, FL, for Respondent.

Petition for Review of a Decision from the Board of Immigration Appeals. BIA No. A95-221-846.

Before ANDERSON and PRYOR, Circuit Judges, and VINING,* District Judge.

PER CURIAM:

After oral argument and careful consideration, we cannot conclude that Perdomo's petition should be granted. The Board of Immigration Appeals held, at least in an alternative holding, that petitioner's

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* Honorable Robert L. Vining, Jr., United States District Judge for the Northern District of Georgia, sitting by designation.

claims for relief failed because petitioner had failed to establish that he was a victim of past persecution on a protected ground. We need not address whether or not the single assault suffered by petitioner at the hands of FARC might have been sufficiently severe to rise to the level of persecution, had petitioner proved the protected ground aspect. We do conclude, however, that the record does not compel a result contrary to the finding of the BIA that petitioner failed to establish the protected ground element. The record does not compel a finding that FARC's assault on petitioner, when he rose to defend his wife, was based upon either petitioner's own political opinion, or an imputed political opinion attributed to petitioner by FARC.

With respect to petitioner's claim of a well founded fear of future persecution, we readily conclude that the record does not compel a conclusion contrary to that of the BIA, especially in light of petitioner's divorced status from his wife, who was the focus of FARC's attention.

PETITION DENIED.

U.S. DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
Orlando, Florida

File A 95 221 846 February 15, 2005

In the Matter of

NESTOR ALBERTO PERDOMO,) IN REMOVAL
) PROCEEDINGS
Respondent)

CHARGE: Immigration and Nationality Act Section 247(a)(1)(B) 101(a)(15) of the Act-remaining in the United States for a time longer, than permitted.

APPLICATION: Asylum, withholding of removal, withholding under the Torture Convention.

ON BEHALF OF RESPONDENT:

Rodrigo Vilar, Esquire

ON BEHALF OF DHS:

Yon K. Alberdi, Esquire
Assistant Chief Counsel
Orlando, Florida

ORAL DECISION OF THE IMMIGRATION COURT

The respondent is a 43-year-old, divorced, male alien, native and citizen of Colombia. He last entered the United States on May 25, 2001 as a tourist authorized to remain in the United States temporarily until November 24, 2001. However, he remained in the United States beyond such date without

authorization from the Immigration and Naturalization Service.

This matter became before the Court as a result of a form I-862, Notice to Appear issued to the respondent by the Immigration and Naturalization Service now the Department of Homeland Security. It was served on him in person on January 31, 2002 in compliance with Section 239(a)(1)(F) of the Act. The NTA states that the respondent is subject to removal and therefore (Indiscernible).

During master, calendar proceedings the respondent through prior counsel at the time while being married to his former spouse conceded in consolidated proceedings that they were subject to removal as charged and he asked the Court to be considered for asylum, withholding, and Torture Convention in an application that his ex-wife had filed on their own behalf in form I-589 (Exhibit 2). Eventually, this case became severed from the respondents wife as they got divorced, she married a US citizen and now has an adjustment of status application pending.

The respondent herein then was allowed to file his own application for asylum and we have received an application for asylum, the form I-589 (Exhibit 2) in which it is claimed that he has been and will be persecuted in Colombia because of his imputed political opinion. The respondent was advised the consequences of filing a frivolous application for asylum and those were (indiscernible) are Exhibit 3 of proceedings.

The respondent was furthermore invited to submit additional documentation in regards to his application for asylum and any personal documentation he failed to supply he did however supply several Government documents regarding information on (Indiscernible) threats while relocating within the country of Colombia as well as on health brigades and threats against those who participate in them as well as the international protection of considerations regarding Colombian asylums (indiscernible) and refugees from, this is Amnesty International.

The Government has submitted on it's own the country reports, human rights practices which are the most recent available for the calendar year 2003, released on February 25, 2004.

Respondent therefore claims relief in the form of asylum pursuant to Section 208 of the Act. Withholding of removal pursuant to Section 241(b)(3) of the INA and the regulations governing the Torture Convention.

STATUTORY REQUIREMENTS FOR ASYLUM AND RESTRICTIONS OF REMOVAL AS WELL AS WITHHOLDING UNDER THE TORTURE CONVENTION

Pursuant to Section 208 of the Act the attorney general may grant asylum to the respondent if it is determined that he is a refugee within the meaning of Section 101(A) of the INA. That section defines the term refugee to include any person outside the

country of such persons nationality but who is unable or unwilling to return to that country because of either past persecution on a well-founded fear of future persecution on account of race, religion, nationality, membership in a particular social group, or political opinion wether real or imputed. See *INS v. Cardoza-Fonseca,* 480 U.S. 421 (1987); *Matter of Mogharrabi,* 19 I&N Dec. 439 (BIA 1987).

Asylum claims in many cases are based on persecution by the Government or authorities in the applicants home country. Claims may also be based however, like this one on persecution by non-governmental actors if the Government is unable or unwilling to provide protection to the asylum applicant. See *Matter of Eyelta,* 20 I&N Dec. 142 (BIA 1990). Generally in these cases the asylum applicant must show that it is not reasonable to seek protection elsewhere in his country.

In order to establish a well-founded fear of persecution the respondent must show that he possesses a belief or characteristic that an unidentifiable persecution seeks to overcome (indiscernible) of punishment of some sort. Number two, the persecutor is already aware or could become aware that the alien possesses this belief or characteristic. Number three, that the persecutor is already aware or could become aware that the alien possesses this belief or characteristic. Number three, that the persecutor has the capability of punishing the alien, and number four, that the persecutor has the inclination to punish the alein. See *Matter of Mogharrabi,* 19 I&N Dec. 439 (BIA 1987).

Furthermore, in *INS v. Cardoza-Fonseca, supra,* the Supreme Court of the United States held that the well-founded fear requires the showing that the fear of persecution is based on a reasonable possibility that such harm would occur. This standard is more generous than the clear probability standard applicable to withholding of removal under Section 241(b)(3) of the INA witch will be discussed below.

An asylum applicant bears the burden of proof to establish that he is a refugee as defined in Section 101(a)(42) of the INA. In some cases the only available, evidence of his subjective fears may be his own testimony in that will suffice where wholly believable, entirely consistent, and sufficiently detailed to provide a plausible and coherent account of the basis for his fear. If there is evidence to corroborate the respondents story however, it should be submitted as a matter of record. Otherwise, the respondent should reasonably explain to the Court why such evidence was not submitted. See *Matter of S-M-J-,* 21 I&N Dec. 722 (1998).

As explained before the respondents request for asylum in the United States is contemporaneously viewed as an application for withholding of removal. Section 241(b)(3) of the INA restricts the removal of (Indiscernible) where his life or freedom will be threatened because of his race, religion, nationality, membership in a particular social group, or political opinion whether real or imputed. The statutory provision requires that the respondent must demonstrate a clear probability of persecution on account of

one of the five grounds enumerated the Act. See *INS v. Stevic,* 467 U.S. 407 (1984). This clear probability standard requires a showing that it is more likely than not that the respondent would be subject to such persecution; therefore, that is why it is more stringent than that required for asylum.

For applications following (indiscernible) April 1, 1997 the applicant can be considered for the relief of withholding of removal under the United Nations Convention Against Torture. 8 C.F.R. Section 208.16 as set defines that term as any act by which severe pain or suffering, whether physical or mental is intentionally inflicted on a person, for one of several purposes. In addition, in order to constitute torture the act must be directed a person in the (indiscernible) custody of physical control. And the pain or suffering must he inflicted by or at the instigation of, or with the consent or acquiescence of a public official, or a person acting in an official capacity. The applicant for withholding of removal under the Torture Convention bears the burden of establishes that it is more likely than not that he would be tortured if removed to the proposed country of removal. As with asylum this burden can be established by testimony without corroboration if the testimony is completely credible.

In assessing whether the applicant has satisfied that high burden of truth the Court must consider all evidence relevant to the possibility of future torture which includes evidence of past torture inflicted upon the applicant. Evidence that he can relocate to a part

of the country where he is not likely to he tortured and evidence of gross, flagrant, or mass violations of human rights within the country of removal.

ANALYSIS OF THIS CASE AND CONCLUSIONS OF THE COURT

After the respondent announced that he had divorced his wife and be was allowed to file his application for asylum he has had more than one year to come and document his claim to asylum which he fails to do alleging that difficulties in obtaining documents from Colombia because he only has an elderly parent and a sister and the town that he was living in has been basically taken over by the guerilla. But, there are no current country reports to confirm that. In any case, the respondent claims, and that was consistent with his application that he was living in Arbelaez in the Cundinamacarca department which is one and half hours from Bogota and which has about 60,000 people where he lived with his wife Nilzy Cardenas who worked not only for the municipal police but also belonged to the liberal party and belonged to a program of the liberal party which was involved with steering the youth, displaced peasants youth away from the guerilla for which she participated in giving classes on Wednesdays in the evenings for the three hours at city hall.

The respondent himself was an electrician working for the local energy company from the year 1990 to the year 2000. Now, he states that he had problems

with the guerilla because of his wife's involvements in this liberal party program. Once on July of 2000 15 men from the 47 (indiscernible) farc came in and insulted the teachers of the program. Told the youth that they had to join the guerillas, but the program continued it's classes even after they started receiving threatening pamphlets and literature. The respondent said that he wanted his wife to resign but she did not want to because her ideals were very clear and she was much against the guerillas. Then they suffered an attempt in November of 2000 coming back from a party they were met by farc members on the road. Five guerillas yelled at them, insulted them, and hit them both and when he went to defend his wife then they jumped on him and beat him and he fell to the ground and they were both told to stop the classes or their lives were at stake and they shot the car tires and they left.

They immediately went to the police station to report the incident but the police chief is reported to have told them that the best thing for them to do was to leave town, and the next day they did just that they left to Bogota. But there they received calls and that they were located, that they knew their whereabouts, so they decided then to leave the country and they left to Aruba where they remained for, a number of months until they finally entered into the United States. They filed for asylum and they were referred to this Court. And now today, the respondent fears that due to the simple fact that he was married to his ex-wife they will want to know where she is if he goes

back and because he was also threatened for being married to her at the time of that attack in the year 2000 even though he did not participate in any meetings nor did he belong to any political organizations he fears for his life. Because the guerillas will think that they can get her through him and he states that the guerillas know which people have left and who returns in that he did not try to live anywhere else because he states the guerillas is everywhere. However, he stated that his father and his sister who live in Bogota have never, according to his better knowledge have been contacted by the farc about him or about his ex-wife.

The respondents testimony is essentially consistent with the application, but a credible testimony does not necessarily qualify a respondent for asylum. I do agree with the Government in this case that because the respondents marriage has ended then his fear of persecution has in fact diminished quite substantially. I do not believe that the incident that occurred to him qualifies as severe past persecution pursuant to *Matter of Chen,* 20 I&N Dec. 16 (BIA 1989) such that we could determine that there is a well-founded fear of persecution. In this case also the respondent has presented information that suggests that relocation for people who are persecuted by the guerillas is almost impossible. But in this case I do not find that there was such persecution. Such that the guerillas in Colombia would have compelling interest to find the respondent, especially now that he will be returning to Colombia alone and that it will be

well known I am sure that he is estranged to his ex-wife.

He does not necessarily have to return to Arbelaez, or to even the department. He has alternatives which he did not explore when he was in Colombia still married to his wife fearing that he could found anywhere else. Although this document that we have suggests that there is now guerilla activity in the departments where traditionally there was none the document fails to support a finding that it is so strong that the guerillas have the ability to persecuted anyone anywhere else and besides, this is a document that is more than two years old. And, the guerillas have met with the force of the Government in Colombia at this time and are still having strongholds, but have diminished quite considerably in some other areas as well. The para-military's themselves have been reduced dramatically by agreements with the Government and therefore I just do not have anything recently that would suggest that in this case the respondent could not relocate anywhere else within Colombia. And since he himself never had any position in any political organization that would on his own suggest that he has a well-founded fear of persecution. I find then that pursuant to *Matter of A-E-M-*, 21 I&N Dec. 1957 (1998) he would have an alternative living in Colombia.

Therefore, the Court finds that the respondent has not met his burden to establish eligibility for asylum and it must also find that there is no eligibility for withholding of removal since it does not appear

to the Court that it would more likely than not that the respondent would be persecuted in Colombia because of any one of the five grounds specified in Section 241(b)(3) of the INA.

Additionally, the Court would find that the respondents application for withholding of removal pursuant to Article III of the Convention Against Torture must be denied since by mere definition the respondents fear of torture stems from guerillas which are not of course part of the Government and therefore by definition the Court does not have a viable application for his relief.

Accordingly, after having examined the totality of the record including the respondents testimony and the documents presented the Court enters the following orders:

ORDER

The application for asylum is DENIED.

The application for withholding of removal is DENIED.

The application for withholding under Article III of the Convention Against Torture is DENIED.

The respondent is ORDERED removed from the United States to Colombia.

RAFAEL B. ORTIZ-SEGURA
Immigration Judge

CERTIFICATE PAGE

I hereby certify that the attached proceeding before RAFAEL B. ORTIZ-SEGURA in the matter of:

NESTOR ALBERTO PERDOMO

A 95 221 846

Orlando, Florida

was held as herein appears, and that this is the original transcript thereof for the file of the Executive Office for Immigration Review.

/s/ Melinda Perry
Melinda Perry (Transcriber)

Deposition Services, Inc.
6245 Executive Boulevard
Rockville, Maryland 20852
(301) 881-3344

December 10, 2005
(Completion Date)

RELEVANT CASES

Arango v. U.S. Atty. Gen., 2007 WL 4352756 (11th Cir. December 13, 2007);

Soler v. U.S. Atty. Gen., 2007 WL 4294713 (11th Cir. December 10, 2007);

Chalela v. U.S. Atty. Gen., 2007 WL 4226140 (11th Cir. December 3, 2007);

Torres v. U.S. Atty. Gen., 2007 WL 4226379 (11th Cir. December 3, 2007);

Delgado v. Mukasey, 2007 WL 4180134 (2nd Cir. 2007 November 28, 2007);

Ussa v. U.S. Atty. Gen., 2007 WL 4124301 (11th Cir. November 21, 2007);

Romero v. U.S. Atty. Gen., 2007 WL 4105363 (11th Cir. November 20, 2007);

Arenas-Garcia v. Mukasey, 2007 WL 4105718 (2nd Cir. 2007 November 20, 2007);

Mojica-Sanchez v. U.S. Atty. Gen., 2007 WL 3326094 (11th Cir. November 9, 2007);

Cubides v. U.S. Atty. Gen., 2007 WL 3307370 (11th Cir. November 8, 2007);

Gaitan v. Keisler, 2007 WL 3316278 (5th Cir. November 8, 2007);

Lopez v. U.S. Atty. Gen., 504 F.3d 1341 (11th Cir. 2007); *Calle v. U.S. Atty. Gen.*, 504 F.3d 1324 (11th Cir. 2007); *Guerrero v. U.S. Atty. Gen.*, 2007 WL 3032510 (11th Cir. October 18, 2007);

Henao v. U.S. Atty. Gen., 2007 WL 2948577 (11th Cir. October 11, 2007);

Jaramillo-Mertinez v. U.S. Atty. Gen., 2007 WL 2900571 (5th Cir. October 5, 2007);

Rodriguez v. U.S. Atty. Gen., 2007 WL 2859665 (11th Cir. October 3, 2007);

Martinez Quintero v. U.S. Atty. Gen., 240 Fed.Appx. 375 (11th Cir. September 7, 2007);

Mejia v. U.S. Atty. Gen., 498 F.3d 1253 (11th Cir. 2007);

Segura v. U.S. Atty. Gen., 240 Fed.Appx. 347 (11th Cir. September 4, 2007);

Garcia v. Gonzalez, 500 F.3d 615 (11th Cir. 2007);

Clavijo v. U.S. Atty. Gen., 2007 WL 2302316 (11th Cir. August 13, 2007);

Becerra-Yate v. U.S. Atty. Gen., (11th Cir. August 13, 2007);

Mendoza-Avella v. U.S. Atty. Gen., (11th Cir. August 1, 2007);

Sanchez Jiminez v. U.S. Atty. Gen., 492 F.3d 1223 (11th Cir. 2007);

Arieza-Morea v. U.S. Atty. Gen., 239 Fed.Appx. 505 (11th Cir. July 16, 2007);

Lopez v. Gonzalez, 239 Fed.Appx. 620 (11th Cir. July 15, 2007);

Viveros-Velez v. U.S. Atty. Gen., 240 Fed.Appx. 314 (11th Cir. July 12, 2007);

Lopez v. U.S. Atty. Gen., 490 F.3d 1312 (11th Cir. 2007).